

ORDINANCE NO. 792
AN ORDINANCE OF THE TOWN OF DARRINGTON, WASHINGTON, ADDING TITLE 21
“CODE ENFORCEMENT” TO THE TOWN OF DARRINGTON MUNICIPAL CODE (DMC)

WHEREAS, the Town of Darrington is organized under Title 35 RCW; and,

WHEREAS, the governing body of the Town of Darrington is given broad authority under RCW Section 35.27.370 “to pass ordinances that are not in conflict with the Constitution and laws of this state or the United States”; and,

WHEREAS, the Town of Darrington is committed to maintaining quality neighborhoods and an excellent community environment through the enforcement of the Darrington Municipal Code; and,

WHEREAS, the Town of Darrington wishes to emphasize code compliance by education and prevention as a first step; and,

WHEREAS, the Town of Darrington strives to create uniform and efficient procedures, with consistent application tailored appropriately by the Washington State and Federal regulations in order to achieve timely code compliance throughout the Town; and,

WHEREAS, it is in the best interest of the public for the Town of Darrington to have a uniform procedure for which code violations are handled;

NOW, THEREFORE, the Town Council of the Town of Darrington do ordain as follows:

Section One. A new Title 21 entitled “Code Enforcement” is hereby added to read as follows:

Chapters:

CHAPTER 21.05 - GENERAL PROVISIONS

Sections:

21.05.010 - Name and purpose.

- A. This title shall be known as “code enforcement.” The purpose of this title is to establish an efficient system to enforce non-traffic civil violations of the Town Municipal Code as well as such uncodified ordinances as the director deems appropriate; to provide an opportunity for a prompt hearing and decision on alleged violations of ordinances and regulations adopted by the Town of Darrington; and to establish penalties for violations including abatement of any affected properties. This title declares certain acts to be civil violations and establishes nonpenal enforcement procedures and civil penalties. This title also declares certain acts to be misdemeanors.

- B. It is the intention of the town to pursue code compliance actively and vigorously in order to protect the health, safety, and welfare of the general public. The town's intention is to pursue enforcement in a way that is consistent with adherence to, and respectful of, fundamental constitutional principles.
- C. While this title does authorize the Town of Darrington to take action to enforce town ordinances and regulations, it shall not be construed as placing responsibility for code compliance or as creating any duty on the part of the town to any particular case, or as creating any duty on the part of the town to any particular persons or class of persons.

21.05.020 - Statement of policy.

It is the policy of the Town of Darrington to emphasize code compliance by education and prevention as a first step. This policy is designed to ensure code compliance, timely action, and uniformity in its implementation. While warnings and voluntary compliance are desirable as a first step, enforcement up to and including civil and criminal penalties should be used as needed to assure and effect code compliance. Abatement or remediation should be pursued when appropriate and feasible. Uniform and efficient procedures, with consistent application tailored by regulation, should be used to accomplish this policy.

21.05.030 - Definitions.

The words and phrases designated in this section shall be defined for the purposes of this title, unless a different meaning is plainly required, as follows:

- A. "Abate" means to take steps deemed necessary by the director, including but not limited to rehabilitation, demolition, removal, replacement, or repair, in the interest of the general health, safety, and welfare of the community.
- B. "Civil code violation" means and includes any act or omission including causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission contrary to:
 - 1. Any title, chapter, or section of the code that imposes a civil penalty for a violation, and such uncodified ordinances as the director deems appropriate; and
 - 2. The conditions of any permit, notice of violation, notice of infraction, or stop work order issued pursuant to any ordinance, resolution, regulation, or public rule.

Each day or portion thereof a property or person is not in compliance with the provisions identified in this definition shall constitute a separate violation.

- C. "The court" means the Darrington Municipal Court also known as South Cascade District Court.

- D. "Department" shall include, but not be limited to, the planning department, the building department, the police and fire department, the finance department, and the public works department, or any other town department.
- E. "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.
- F. "Director" shall include, but not be limited to, the town: building official, police chief, fire chief, public works director, finance director, and planning director or other town official charged with the enforcement of a particular portion of the Darrington Municipal Code. The director of a department may designate an individual or individuals to act in his or her stead.
- G. "Emergency" means a situation that in the opinion of the director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.
- H. "Mitigate" means to take measures, subject to town approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.
- I. "Ordinance" for the purposes of this title means any ordinance adopted by the Darrington Town Council.
- J. "Permit" means any form of certificate, approval, registration, license, or any other written permission issued by the town. All conditions of approval and all easements and use limitations shown on the face of an approved final plat map that are intended to serve and protect the general public are deemed conditions applicable to all subsequent plat property owners and their tenants and agents as permit requirements enforceable under this title.
- K. "Person" means any individual, association, partnership, corporation, or legal entity, public or private, and the agents and assigns of such individual, association, partnership, corporation, or legal entity.
- L. "Person(s) responsible" means the person who caused the code violation, if that can be determined, and/or the owner, lessor, tenant or other person entitled to control, use, and/or occupy property where the civil code violation occurs.
- M. "Public rule" means any rule properly promulgated to implement code provisions.
- N. "Remediate" means to restore a site to a condition that complies with the town's regulatory requirements including critical areas. Remediation shall include but not be limited to the replacement of all improperly removed ground cover with species similar

to those which were removed or other approved species such that the biological and habitat functions and values will be replaced to the greatest extent possible. Studies by qualified experts shall be conducted to determine the conditions which were likely to exist on the lot prior to the illegal alteration. "Remediate" shall also include installation and maintenance of interim and emergency erosion control measures until such time as the restored site complies with town requirements.

- O. "Repeat violation" means a violation of the same regulation in any location by the same person, for which voluntary compliance has previously been sought or a notice of code enforcement has been issued, within the immediately preceding twelve-consecutive-month period.
- P. "Resolution" for purposes of this title means any resolution adopted by the Darrington Town Council.

21.05.040 - Grammatical construction.

Unless the context clearly indicates otherwise, words in any tense shall include the present, past and future tense.

21.05.050 - Additional enforcement procedures.

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

21.05.060 - Conflicts.

In the event of a conflict between this title and any other provision of the Darrington Municipal Code or other town ordinance providing for a civil penalty, this title shall control.

21.05.070 - Severability and pre-emption.

- A. If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this title is for any reason held invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of this title shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this title shall be valid and enforceable to the fullest extent permitted by law.
- B. In the event that federal or state laws, rules or regulations pre-empt a provision or limit the enforceability of a provision of this title, then the provision shall be read to be pre-empted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been pre-empted is no longer pre-empted, such

provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the town, and any amendments to this title as a result of such provision being pre-empted shall no longer be of any force or effect.

CHAPTER 21.10 - ENFORCEMENT AND ADMINISTRATION

Sections:

21.10.005 - Scope.

Except in cases where a different punishment is prescribed by any ordinance of the town, all civil code violations defined under Section 21.05.030(B) shall be enforced and administered under this title.

21.10.010 - Enforcement authority and administration.

- A. In order to discourage code violations and otherwise promote compliance with applicable code provisions, the director may, so long as reasonable cause exists, determine that civil code violations have occurred or are occurring and may:
 1. Issue notices of violations and orders to persons responsible;
 2. Enter into voluntary compliance agreements with persons responsible for the code violations;
 3. Issue notices of infractions, assess civil penalties and fines and recover costs as authorized by Chapters 21.25 and 21.35;
 4. Order abatement by means of a notice of violation and order, or notice of infraction, and, if such abatement is not timely completed by the person responsible for the code violation, undertake the abatement and charge the reasonable costs of such work as authorized by Chapter 21.40;
 5. Allow a person responsible for the code violation to perform community service in lieu of paying civil penalties as authorized by Section 21.35.050(D);
 6. Order work stopped at a site by means of a stop work order, and, if such order is not complied with, assess civil penalties, as authorized by Chapter 21.30 and/or;
 7. Suspend, revoke or modify any permit previously issued by the director or deny a permit application as authorized by Sections 21.35.050 and 21.25.060 when other efforts to achieve compliance have failed.

- B. In addition or as an alternative to utilizing the procedures set forth in this title, the director may seek legal or equitable relief to abate any conditions or enjoin any acts or practices that constitute a civil code violation.
- C. In addition or as an alternative to utilizing the procedures set forth in this title, the director may assess or recover civil penalties accruing under this title by legal action filed in a court of competent jurisdiction by complaint or petition through the town attorney.
- D. The provisions of this title shall in no way adversely affect the rights of the owner, lessee or occupant of any property to recover all costs and expenses incurred and required by this title from any person causing such violation.
- E. The town may use the services of a collection agency in order to collect any fines, penalties, fees or costs owing under this title.
- F. In administering the provisions for code enforcement, the director shall have the authority to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided. For purposes of this clause, substantial injustice cannot be based on economic hardship.
- G. The provisions of this title authorizing the enforcement of noncodified ordinances are intended to assure compliance with conditions of approval on plats, unclassified use permits, zone reclassifications and other similar permits or approvals that may have been granted by ordinances that have not been codified, and to enforce new regulatory ordinances that are not yet codified.

21.10.020 - Declaration of public nuisance – misdemeanor.

- A. All civil code violations hereby are determined to be detrimental to the public health, safety, and environment and are hereby declared public nuisances. All conditions determined to be civil code violations shall be subject to and enforced pursuant to the provisions of this title except where specifically excluded by law or regulation.
- B. Any person who willfully or knowingly causes, aids or abets a civil code violation pursuant to this title by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by a fine not to exceed one thousand dollars and/or imprisonment in jail for a term not to exceed ninety days. Each week (seven days) such violation continues shall be considered a separate misdemeanor offense. As an alternative, or in addition to any other judicial or administrative remedy provided in this title or by law or other regulation, the director may request that the town attorney consider filing a misdemeanor complaint against the persons responsible for the code violation when the director has documentation or evidence that the violation was willful and knowing.

- C. Interference. Any person who knowingly obstructs, impedes, or interferes with the town or its agents, or with the person responsible for the code violation in the performance of duties imposed by this title, shall be guilty of a misdemeanor punishable by imprisonment not exceeding ninety days and a fine not to exceed one thousand dollars.
- D. Failure to Identify. RCW 7.80.060 is hereby adopted by reference requiring a person who is to receive a notice of civil infraction or notice of violation under this title to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person shall produce reasonable identification, including a driver's license or identicard. A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction. Any person who fails to comply with this provision shall be guilty of a misdemeanor punishable by imprisonment not exceeding ninety days and a fine not to exceed one thousand dollars. "Enforcement officer" shall mean any person authorized to enforce the provisions of this title or any ordinance or regulation in which a civil violation is established.

21.10.030 - Authority to enter.

Any officer authorized by this title to enforce the civil provisions of the Darrington Municipal Code may, with the consent of the owner or occupier of a building or premises, enter at reasonable times any building or premises in order to perform the duties imposed by this title.

21.10.040 - Persons responsible for violations, abatement, remediation, and compliance.

- A. It shall be the responsibility of any person identified as a person responsible for a code violation to bring the property into a safe and reasonable condition to achieve code compliance. Payment of fines, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing the corrective work required and having the property brought into compliance to the extent reasonably possible under the circumstances. Persons determined to be responsible for the code violation pursuant to a notice of infraction, notice of violation and order, or stop work order shall be liable for the payment of any civil fines, penalties, and abatement costs for bringing the property into compliance.
- B. Property Owners. It is the intent of this title to include property owners within the obligation for complying with its requirements as persons responsible for the condition of land and buildings situated within the town of Darrington and within the scope of the Darrington Municipal Code and for bringing the land and buildings into compliance. Persons, including any legal entity, who are owners of property where a civil code violation exists are included as "person(s) responsible" as defined by Section 21.05.030(K) in the event a violation continues after being notified of the violation by the town. After being notified of a code violation, the property owner shall provide the director, within seven days of the notice upon request, the identification of any lessor,

tenant or other person entitled to control, use, and/or occupy property along with a copy of any rental or lease agreement. Failure to provide such information shall result in a violation of this title.

21.10.050 - Administrative conferences.

An informal administrative conference may be conducted by the director at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties should not be unreasonably excluded from such conferences.

21.10.060 - Investigation, civil infraction citations, and notices of violation.

- A. Whenever the department receives a complaint of a civil code violation from a member of the public, member of the department itself, or from another department, the director shall order an investigation.
- B. Upon investigation, the director shall determine whether there is reasonable cause to believe that a civil code violation has occurred. If the department determines that such a violation has not occurred, the complaint and file will be closed.
- C. If the director determines that reasonable cause exists to believe that a civil code violation has occurred, the director:
 1. Shall document what remedial action is necessary to bring the site into compliance with the code.
 2. Shall issue a notice of violation and order in accordance to the provisions of Chapter 21.15 or a notice of infraction in accordance to the provisions of Chapter 21.25 to the person responsible for the violation. The director should consider the following circumstances in deciding whether or not to issue a notice of violation in lieu of a notice of infraction:
 - i. When an emergency exists; or
 - ii. When a repeat violation occurs; or
 - iii. When the violation creates a situation or condition that cannot be corrected; or
 - iv. When the person knows or reasonably should have known that the action is in violation of a town regulation; or
 - v. The person cannot be contacted or refuses to communicate or cooperate with the town in correcting the violation.

CHAPTER 21.15 - NOTICE OF VIOLATION AND ORDER/ADMINISTRATIVE PROCEEDING

Sections:

21.15.010 - Notice of violation.

- A. After investigation, the director may serve a notice of violation and order upon the person responsible for a civil code violation. In the event a notice of violation is issued, the department shall investigate and re-inspect any site at the end of the timeframe specified in the notice of violation to ensure that the condition(s) has been corrected in accordance with the terms specified in the notice of violation. If the re-inspection reveals that the condition(s) has been corrected, the complaint and file will be closed. If the condition has not been corrected, any person violating or failing to comply with the provisions of a notice of violation and order shall be subject to penalties set forth in Chapter 21.35.
- B. The notice of violation and order shall contain the following information:
 - 1. The address or other identification of the location of the violation; and
 - 2. A brief and concise description of the conditions alleged to be in violation of the Darrington Municipal Code, permit, ordinance, public rule, resolution, or regulation and a reference to the provision(s) of the Darrington Municipal Code, permit, ordinance, public rule, resolution, or regulation that is being violated; and
 - 3. A statement of the corrective or abatement action required to be taken and that all required permits to perform the corrective action must be obtained from the proper issuing agency; and
 - 4. A statement declaring the timeframe for correcting the violation or, if applicable, submitting an acceptable work schedule with a voluntary compliance agreement; and
 - 5. A statement notifying the person responsible for the code violation that at the end of the specified timeframe a re-inspection of the property will be conducted to ensure that the necessary corrective or abatement actions have been completed; and
 - 6. A statement notifying the person responsible for the code violation explaining the appeal process and the specific information required to file an appeal; and
 - 7. A statement advising any person that failure to comply with the provisions in the notice of violation and order shall carry with it a cumulative monetary penalty as set forth in Chapter 21.35 per day for each violation from the date set for compliance in the notice of violation and order until compliance with the notice of violation and order is achieved; and

8. A statement of the abatement procedure that may be implemented by the town if the party responsible and a notice that the person responsible for the violation will be charged with the costs associated with such an abatement procedure as authorized by Chapter 21.40.
- C. Amendment. A notice of violation and order may be amended at any time in order to:
1. Correct clerical errors; or
 2. Cite additional authority for a stated violation.
- D. Final Orders. Any notice of violation and order issued pursuant to this chapter shall become a final order unless, no later than fifteen calendar days after the notice of violation and order is served, any person aggrieved by the notice of violation and order files an appeal with the director in accordance with Sections 21.15.030 and 21.15.040.

21.15.020 - Service – Notice of violation.

- A. Service of a notice of violation shall be made on the person responsible for a code violation by one or more of the following methods:
1. Personal service of the notice of violation on the person identified by the department as being responsible for the code violation, or by leaving a copy of the notice of violation at that person's house of usual abode with a person of suitable age and discretion who resides there.
 2. Service directed to the landowner and/or occupant of the property may be made by posting the notice of violation in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below.
 3. Service by mail may be made for a notice of violation by mailing a copy, postage prepaid, by ordinary first class mail, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of the county shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the notice of violation was placed in the mail.
 4. If the person responsible for the code violation cannot be personally served within the town of Darrington, and if an address for mailed service cannot reasonably be determined, then service may be made by posting the notice of violation in a conspicuous place on the property where the violation occurred.

- B. 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 personally or by mail.
- C. The failure of the director to make or attempt service on any person named in the notice of violation shall not invalidate any proceedings as to any other person duly served.

21.15.030 - Right of appeal – Timeliness.

- A. Time for Appeal. Other than the issuance of a civil infraction, a person aggrieved by the director's action as a result of a notice and order, other order, decision, ruling, or interpretation by the director may appeal the director's action by filing a written request for appeal with the director within fifteen calendar days after receiving or otherwise being served with notice of the director's action. When the last day of the period so computed is a Saturday, Sunday, or state-recognized holiday, the period shall run until four-thirty p.m. on the next business day. Failure to file a written request for appeal within time prescribed will result in the director's action becoming a final order and the appellant shall be bound thereby.
- B. Reconsideration. An aggrieved person may request reconsideration of the director's action in writing within ten calendar days after receiving or otherwise being served with notice of the director's action by submitting the request to the appropriate department contact listed in the notice of violation. When the last day of the period so computed is a Saturday, Sunday, or state-recognized holiday, the period shall run until four-thirty p.m. on the next business day. Any reconsideration request shall cite specific references to the findings and/or criteria contained in the ordinances, rules, permit, or other authority governing the type of decision being reviewed. The director shall promptly review the reconsideration request and shall, within five working days, issue a written decision on reconsideration, either approving or denying the request. A request for reconsideration temporarily suspends the period within which an appeal of the director's decision from the date of filing the written request for reconsideration to the date of the decision on reconsideration. If the reconsideration is denied, the period for appeal of the director's action shall recommence for the remaining number of days.
- C. Appeal to Be Heard by Town's Hearing Examiner. A timely filed appeal will be heard by the town's hearing examiner as established by Chapter 2.48 following procedures set in Section 21.15.040. Any appeal of the director's action may be affirmed, reversed or modified in the hearing examiner's final order. The decision of the hearing examiner shall be a final order and the appellant and the director shall be bound thereby unless, within twenty-one days from the date of the issuance of the hearing examiner's final order, a person with standing to appeal files a petition to the superior court. The cost for the transcription of all records ordered certified by the superior court for such review shall be borne by the appellant.

21.15.040 - Appeal procedure.

- A. An aggrieved person who desires to file an appeal of the director's action must do so pursuant to the provisions set forth in this section. The appellant shall file a written appeal to the director within the time period prescribed in Section 21.15.030 and shall pay fees as listed in the master fee schedule adopted by resolution of the town council. The written appeal shall contain the following information:
 - 1. The names of all appellants participating in the appeal;
 - 2. A brief statement of the specific director's action protested, together with any material facts claimed to support the contentions of the appellant;
 - 3. A brief statement of the relief sought, and the reason why the protested action should be reversed, modified, or otherwise set aside;
 - 4. The signatures of all parties named as appellants and their mailing addresses; and
 - 5. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- B. Upon the receipt of the appeal and the filing fee, the director shall transmit the same to the town planning director, who shall schedule an appeal hearing before the hearing examiner and give due notice thereof to the appellants.
- C. At or after the appeal hearing, the hearing examiner may affirm, reverse, or modify the director's action or continue the hearing to a date certain for receipt of additional information.
- D. The hearing examiner shall issue a written decision within thirty days after the hearing and shall cause copies thereof to be sent to the director and appellants.
- E. All written orders by the hearing examiner pursuant to this section shall include a report giving findings of fact, conclusions, and the hearing examiner's decision.
- F. The written decision of the hearing examiner shall be a final order, and the appellant and the director shall abide thereby unless the order is appealed to superior court within the time period prescribed by Section 21.15.030(C) by a person with standing to appeal.

CHAPTER 21.20 - VOLUNTARY COMPLIANCE AGREEMENTS

Sections:

21.20.010 - Voluntary compliance agreement.

- A. Whenever the director determines that a civil code violation has occurred or is occurring, the director may make reasonable efforts to secure voluntary compliance from the person responsible for the code violation. Upon contacting the person responsible for the code violation, the town may enter into a voluntary compliance agreement as provided for in this section.
- B. Issuance of Voluntary Compliance Agreement. A voluntary compliance agreement may be entered into between the person responsible for the code violation and the town.
- C. The voluntary compliance agreement is a written signed commitment by the person responsible for the code violation under which such person agrees to abate the violation, remediate the site, and/or mitigate the impacts of the violation. The voluntary compliance agreement shall include the following:
 - 1. The name, address and signature of the person responsible for the code violation; and
 - 2. The address or other identification of the location of the violation; and
 - 3. A description of the violation and a reference to the provision(s) of the ordinance, resolution or regulation that has been violated; and
 - 4. A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed; and
 - 5. An agreement by the person responsible for the code violation that the town may inspect the premises as may be necessary to determine compliance with the voluntary compliance agreement; and
 - 6. The amount of the civil penalty that will be imposed pursuant to Chapter 21.35 if the voluntary compliance agreement is not satisfied; and
 - 7. An acknowledgement that by entering into the voluntary compliance agreement the person responsible for the code violation waives the right to appeal, and thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and
 - 8. An acknowledgement that the voluntary compliance agreement may be recorded against the property with the Snohomish County auditor's office; and
 - 9. An acknowledgement that if the director determines that the terms of the voluntary compliance agreement are not met, the town may, without issuing a notice of infraction, or stop work order, impose any civil remedy authorized by this title, which includes the assessment of the civil penalties identified in the voluntary

compliance agreement, abatement of the violation, assessment of the costs incurred by the town to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit; and

10. An acknowledgment that if a penalty is assessed, and if any assessed penalty, fee or cost is not paid, the director may charge the unpaid amount as a lien against the property where the civil code violation occurred if owned by the person responsible for the code violation, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the code violation; and
 11. An acknowledgment that the person responsible for the code violation understands that he or she has the right to be served with a notice of infraction or stop work order for any violation identified in the voluntary compliance agreement, has the right to appeal any such notice of infraction or stop work order, and that he or she is knowingly, voluntarily and intelligently waiving those rights; and
 12. That should the town be required to enforce the agreement, the person responsible shall be liable for all costs incurred including reasonable attorney fees should a court of competent jurisdiction determine the town is the prevailing party.
- D. Upon entering into a voluntary compliance agreement, a person responsible for the code violation waives the right to appeal, and thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and agrees that if the director determines the terms of the voluntary compliance agreement are not met, he or she is liable for the civil penalty available under Chapter 21.35 and identified in the voluntary compliance agreement, shall bear the costs incurred by the town to pursue code compliance and to abate the violation, including legal and incidental expenses, as provided for in Chapter 21.40, and is subject to all other remedies provided for in this title.
- E. The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance as determined by the director. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the director at the director's sole discretion if the person responsible for the code violation has shown due diligence or substantial progress in correcting the violation, but circumstances render full and timely compliance under the original conditions unattainable.
- F. The voluntary compliance agreement is not a settlement agreement.

21.20.020 - Failure to meet terms of voluntary compliance agreement.

If the terms of the voluntary compliance agreement are not completely met, the director may:

- A. Abate the violation in accordance with the provisions of this title, and the person responsible for the code violation may, without being issued a notice of infraction or stop work order, be assessed a civil fine or penalty commencing on the day after the deadline for compliance, in accordance with the penalty provisions of this title, plus all costs incurred by the town to pursue code compliance and to abate the violation, including legal and incidental expenses, as provided for in this title, and may be subject to other remedies authorized by this title. Penalties imposed when a voluntary compliance agreement is not met accrue from the date that an appeal of any preceding notice of infraction or stop work order was required to have been filed or from the date the voluntary compliance agreement was entered into if there was no preceding stop work order or notice of infraction; or
- B. Issue a notice of infraction, or stop work order for failure to meet the terms of the voluntary compliance agreement; or
- C. Refer the matter to the town attorney's office to initiate legal proceedings to enforce the terms and conditions set forth in the voluntary compliance agreement.

CHAPTER 21.25 - NOTICE OF INFRACTION

Sections:

21.25.010 - Notice of infraction

- A. Authority—Issuance.
 - 1. If, after investigation, the director has reasonable cause that a civil code violation has occurred or is occurring, the director may issue a notice of infraction to the person responsible for the code violation and into the Darrington Municipal Court.
 - 2. The director may issue a notice of infraction without having attempted to secure a voluntary compliance agreement as provided in Chapter 21.20. The director should consider the following circumstances in deciding whether or not to seek a voluntary compliance agreement:
 - i. When an emergency exists; or
 - ii. When a repeat violation occurs; or
 - iii. When the violation creates a situation or condition that cannot be corrected; or
 - iv. When the person knows or reasonably should have known that the action is in violation of a town regulation; or
 - v. The person cannot be contacted or refuses to communicate or cooperate with the town in correcting the violation.

3. Civil infraction citations will be issued and processed in accordance with Chapter 7.80 RCW as now or hereafter amended and which is incorporated herein by reference. The Darrington Municipal Court shall have jurisdiction over all civil infraction citations issued under this chapter.

- B. Right of Appeal—Timeliness. Civil infractions may be contested in the manner specified for such infractions pursuant to Chapter 7.80 RCW.

21.25.020 - Assessment of monetary penalty.

Monetary penalties assessed by the court shall be in accordance with the monetary penalty set forth in Chapter 21.35.

CHAPTER 21.30 - STOP WORK ORDERS

Sections:

21.30.010 - Authorized.

The director is authorized to issue a stop work order to the person responsible for a civil code violation. Issuance of a notice of violation or notice of infraction is not a condition precedent to the issuance of the stop work order.

21.30.020 - Effect.

- A. A stop work order represents a determination that a civil code violation has occurred and that any work or activity that is causing or contributing to the violation on the property where the violation has occurred or is occurring must cease.
- B. A stop work order requires the immediate cessation of the specified work or activity on the named property. Work or activity may not resume unless specifically authorized by the director.
- C. A stop work order may be challenged according to the procedures prescribed in Sections 21.15.030 and 21.15.040.
- D. Failure to appeal the stop work order within the applicable time limits renders the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease.

21.30.030 - Service of a stop work order.

- A. Service of a stop work order shall be made on a person responsible for the civil code violation by one or more of the following methods:

1. Personal service may be made on the person identified by the director as being responsible for the civil code violation, or by leaving a copy of the stop work order at that person's house of usual abode with a person of suitable age and discretion who resides there.
 2. Service directed to the landowner and/or occupant of the property may be made by posting the stop work order in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below.
 3. Service by mail may be made for a stop work order by mailing a copy, postage prepaid, by ordinary first class mail, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of the county shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the stop work order was placed in the mail.
- B. If the person responsible for the code violation cannot be personally served within the town of Darrington and if an address for mailed service cannot reasonably be determined, then service of the stop work order may be made by posting the stop work order in a conspicuous place on the property where the violation occurred.
- C. 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 personally or by mail.
- D. The failure of the director to make or attempt service on any person named in the stop work order shall not invalidate any proceedings as to any other person duly served.

21.30.040 - Remedies.

- A. In addition to any other judicial or administrative remedy, the director may assess civil penalties for the violation of any stop work order as set forth in the civil penalty schedule contained in Chapter 21.35.
- B. Civil penalties for the violation of any stop work order shall begin to accrue on the first day the stop work order is violated and shall cease on the day the work is actually stopped.
- C. Violation of a stop work order shall be a separate violation from any other civil code violation. Civil penalties assessed create a joint and several personal obligation in all persons responsible for the code violation. The town of Darrington may collect the civil penalties assessed by any appropriate legal means.

- D. Violation of a stop work order is hereby declared to be a nuisance and the town is authorized to enjoin or abate such nuisance summarily by any legal or equitable means as may be available. The costs for injunction or abatement shall be recovered by the town from the person responsible for the code violation in the manner provided by law.
- E. In addition to all other remedies, a lien for the value of civil penalties imposed may be filed against the real property that is subject to compliance with this chapter.

CHAPTER 21.35 CIVIL FINES AND CIVIL PENALTIES

Sections:

21.35.010 - Assessment schedule.

- A. Civil fines and civil penalties for civil code violations shall be imposed for remedial purposes and shall be assessed for each violation identified in a notice of violation, notice of infraction, stop work order or voluntary compliance agreement.
- B. The maximum 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.
- C. The director or the Darrington Municipal Court may suspend civil penalties if the person responsible for the code violation has entered into a voluntary compliance agreement. Penalties shall begin to accrue again pursuant to the terms of the voluntary compliance agreement if any necessary permits applied for are denied, canceled, or not pursued or if corrective action identified in the voluntary compliance agreement is not completed as specified.

21.35.020 - Duty to comply.

Persons responsible for the code violation have a duty to notify the director of any actions taken to achieve compliance with the notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for code compliance has come into compliance with the notice of violation, notice of infraction, voluntary compliance agreement, or stop work order and has notified the director of this compliance.

21.35.030 - Civil penalty – Critical areas.

- A. The code compliance provisions for critical areas are intended to encourage compliance with Chapter 18.08 to protect critical areas and the general public from harm and to further the remedial purposes of this title. To achieve this, persons responsible for the code violation will not only be required to restore damaged critical areas, insofar as that is possible and beneficial, but will also be required to pay a civil penalty for the redress of ecological, recreation, and economic values lost or damaged due to their unlawful action.
- B. The provisions in this section are in addition to and not in lieu of any other penalty, sanction, or right of action provided by law for other related violations.
- C. Where feasible, the owner of the land on which the violation occurred shall be named as a party to the notice of infraction. In addition to any other persons who may be liable for a violation, and subject to the exceptions provided in Chapter 18.08 the owner shall be jointly and severally liable for the restoration of a site and payment of any civil penalties imposed.
- D. For the purposes of this section, violation of the town's critical areas ordinance means:
 - 1. The violation of any provision of Chapter 18.08 or of the administrative rules promulgated thereunder;
 - 2. The failure to obtain a permit required for work in a critical area; or
 - 3. The failure to comply with the conditions of any permit, approval, terms and conditions of any critical area tract or setback area, easement or other covenant, plat restriction, binding assurance, notice and order, stop work order, mitigation plan, contract, or agreement issued or concluded pursuant to the above-mentioned provisions.
- E. Any person in violation of a critical areas ordinance may be subject to civil penalties, costs, and fees assessed as follows:
 - 1. According to the civil penalty schedule included in this chapter; or
 - 2. The greater of:
 - i. An amount determined to be equivalent to the economic benefit that the person responsible for the code violation derives from the violation, measured as the total of:
 - a. The resulting increase in market value of the property;

- b. The value received by the person responsible for the code violation; and
 - c. The savings of construction costs realized by the person responsible for the code violation as a result of performing any act in violation of this chapter; or
- ii. Code compliance costs (such amount not to exceed the amount listed in the master fee schedule adopted by resolution of the town council) incurred by the town to enforce Chapter 18.08 against the person responsible for the code violation.

21.35.040 - Separate offenses.

For enforcement purposes, each day, defined as the twenty-four-hour period beginning at 12:01 a.m., in which a violation of this chapter occurs, shall constitute a separate violation.

21.35.050 - Remedies.

- A. Subject to the appeal provisions in Sections 21.15.030 and 21.15.040 and Chapter 7.80 RCW, a notice of violation and order or civil infraction citation represents a determination that a civil code violation has occurred, the cited party is a person responsible for the code violation, and that the violations set out in the notice of violation and order or civil infraction will subject the person responsible for the civil code violation to the assessment of penalties and costs and all other legal or equitable means available, including:
 - 1. Civil penalties and costs;
 - 2. A requirement that abatement, remediation and/or mitigation be performed;
 - 3. Permit suspension, revocation, modification, and/or denial as prescribed by this chapter;
 - 4. Abatement by the director and recovery of the costs of abatement according to the procedures described by this title.
- B. Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom a notice of violation or civil infraction was issued of the duty to correct the violation.
- C. The town is authorized to take a lien for the value of civil penalties imposed against the real property of the person responsible for the code violation pursuant to Chapter 21.45. The town attorney on behalf of the town may collect the civil penalties assessed by any appropriate legal means.

- D. Community Service. The court, director or hearing examiner is authorized to allow a person responsible for the civil code violation who accumulates civil penalties as the result of a notice of violation and order or civil infraction to voluntarily participate in community service projects in lieu of paying all or a portion of the assessed civil penalties with the exception of administration, court costs, or costs incurred by the town to abate a condition caused by the civil code violation. Community service may include, but is not limited to, abatement, restoration or education programs. The amount of community service will reasonably relate to the comparable value of penalties assessed against the violator and shall take into consideration the severity of the violation, any history of previous violations and practical and legal impediments in considering whether to allow community service in lieu of paying penalties.
- E. Cost Recovery. In addition to other remedies available under this title, the person responsible for the civil code violation shall be liable for all costs of pursuing abatement incurred to correct a code violation, including legal and incidental expenses. Such costs are due and payable thirty days from mailing of the invoice.
 - 1. For purposes of this section, “legal and incidental expenses” shall include but are not limited to:
 - i. Personnel costs, both direct and indirect, including attorney’s fees and costs incurred to document the violation as soon as the violation occurs;
 - ii. Hauling, storage and disposal expenses;
 - iii. Actual expenses and costs of the town in preparing notices, specifications and contracts and in accomplishing or contracting and inspecting the work and the costs of any required printing or mailing; and
 - 2. All costs assessed by the town in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for the civil code violation. The town attorney on behalf of the town may collect the costs of code compliance efforts by any appropriate legal means.
 - 3. The town of Darrington may take a lien for the value of the costs of pursuing code compliance against the real property of the person responsible for the civil code violation pursuant to Chapter 21.45.

21.35.060 - Suspension, revocation, or limitation of permit.

- A. The director may suspend, revoke or limit any permit issued by such director whenever:
 - 1. The permit holder has committed a code violation in the course of performing activities subject to that permit;
 - 2. The permit holder has interfered with the director in the performance of his or her duties relating to that permit;

3. The permit was issued in error or on the basis of materially incorrect information supplied to the town;
 4. Permit fees or costs were paid to the town by check and returned from a financial institution marked nonsufficient funds (NSF) or canceled; or
 5. For a permit or approval that is subject to critical area review, the applicant has failed to disclose a change of circumstances on the development proposal site that materially affects an applicant's ability to meet the permit or approval conditions or which makes inaccurate the critical area study that was the basis for establishing permit or approval conditions.
- B. Notice of such suspension, revocation, or modification shall be sent in the same manner as set forth in Section 21.15.020 for a notice of violation. Such revocation, suspension, or cancellation of a permit may be appealed using those procedures set forth in Sections 21.15.030 and 21.15.040.
- C. Notwithstanding any other provision of this title, a director may immediately suspend operations under any permit by issuing a stop work order pursuant to Chapter 21.30.

CHAPTER 21.40 – ABATEMENT

Sections:

21.40.010 - Abatement by the town.

- A. The town may abate a condition that was caused by or continues to be a civil code violation when:
1. The terms of any voluntary compliance agreement pursuant to Chapter 21.20 have not been met; or
 2. A notice of violation and order has been issued pursuant to Chapter 21.15, no appeal was timely and properly filed and the required correction has not been completed; or
 3. An order by any court of competent jurisdiction has been entered; or
 4. The condition is subject to summary abatement as provided for in this section.
- B. Summary Abatement. Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to the 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 reason for it, shall be given to the person responsible for the code 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.

- C. Authorized Action by the Town. Using any lawful means, the town may enter upon the subject property and 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 incidental expenses, of correcting the violation shall be billed to the person responsible for the civil code violation and/or owner, lessor, tenant, or other person entitled to use and/or control of the property and shall be payable to the town within thirty calendar days. The term “incidental expenses” includes but is not limited to personnel costs, both direct and indirect and including attorney’s fees; costs incurred in documenting the violation; hauling, storage, and disposal expenses; actual expenses and costs of the town 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. All such costs and expenses shall constitute a lien against the affected property, as set forth in Chapter 21.45.
- E. Account of Costs. The director shall keep an itemized account of costs incurred by the town in the abatement of any violation under this title. Upon completion of any abatement work, the director shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, including legal and incidental expenses, and interest accrued.
- F. Code Compliance and Abatement Fund—Authorized. All monies collected from the assessment of civil penalties and for abatement costs and work, except those monies designated for the critical areas mitigation fund as set forth in Chapter 18.08, shall be allocated to support expenditures for abatement, and shall be accounted for through either creation of an account in the fund or other appropriate accounting mechanism.

CHAPTER 21.45 – LIENS

Sections:

21.45.010 - Filing and contents.

- A. Within ninety days from the date any civil penalty, civil fine, abatement cost, or enforcement cost is due pursuant to this title, the director may file a lien against the property of a person responsible for the civil code violation for the amount owing with the Snohomish County auditor’s office.
- B. The lien shall contain the following information:
 - 1. The Town of Darrington code provision, rule, permit, ordinance, regulation or resolution violated;

2. A brief description of the violation and its duration at the date of filing;
3. A brief description of the abatement work done, if any, and who performed the abatement work;
4. The owner of the property, if known, or a statement that the owner is not known;
5. A legal description of the property;
6. The amount of penalties, fines or costs that are owing; and
7. A sworn statement signed by the director that the director believes the claim is just.

21.45.020 - Supplemental.

The director may file supplemental liens with the Snohomish County auditor's office to update information regarding penalties, fines, costs or fees contained in any existing lien.

21.45.030 - Lien – Limitation of action – Duration.

No lien created by this title binds the property subject to the lien for a period longer than five years after the lien claim has been recorded, without foreclosure or extension agreed to by the property owner.

When all penalties and/or abatement costs assessed against the property owner have been paid, the director shall expeditiously file a satisfaction of lien with the Snohomish County auditor's office. The satisfaction shall include a legal description of the property where the violation occurred.

Section Two. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

Section Three. Authority to Make Necessary Corrections. The Town Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbers, section/subsection numbers, and any references thereto.

Section Four. Effective Date. This Ordinance shall be in full force and effect five days after publication.

PASSED AND ADOPTED by the Town Council of the Town of Darrington, Washington, on this 14 day of Aug, 2024.


Dan Rankin, Mayor

ATTEST:



Dianne Davis, Town Clerk/Treasurer

APPROVED AS TO FORM:



Nikki Thompson, Town Attorney